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10 Attorneys for Plaintiff, BARRY ROSEN

11
12 UNITED STATES DISTRICT COURT

13
14 CENTRAL DISTRICT OF CALIFORNIA

15
16 BARRY ROSEN,

17 Plaintiff,

18 vs.

19
20 MICHAEL "MIKE" MEDLIN DBA
21 AFFORDABLE AUTOGRAPHS,
22 AFFORDABLE AUTOGRAPHS HOLLY
23 WOOD; HOLLYWOOD SHOW, LLC,
24 A CALIFORNIA LIMITED LIABILITY
25 COMPANY; AND DOES 1-10.

26 Defendants.

Case No.: 2:15-cv-05789-ODW-JC

Assigned to the Honorable Otis D.
Wright, II

JOINT RULE 26(f) REPORT

1
2 **TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF**
3 **RECORD:** Pursuant to Federal Rule of Civil Procedure 26(f) and this Court's
4 order Requiring Joint Status Report, Plaintiff BARRY ROSEN and Defendant
5 HOLLYWOOD SHOW, LLC, a California Limited Liability Company, jointly
6 submit this Status Report. Defendant MIKE MEDLIN refused to participate in the
7 conference of counsel and is currently in default.

8 **I. RULE 26(f) JOINT REPORT**

9 (Per Rule 26(f) and this Court's Order Requiring Joint Status Report)

10 **A. Statement of the Case**

11 Plaintiff's Position: This is a direct and secondary copyright infringement
12 action brought by Plaintiff, Barry Rosen, a professional photographer, who
13 discovered Defendant MICHAEL "MIKE" MEDLIN dba AFFORDABLE
14 AUTOGRAPHS, AFFORDABLEAUTOGRAPHSHOLLYWOOD ("Medlin")
15 made unauthorized prints of his copyrighted Photographs so that he could obtain
16 the featured celebrities' autograph on the prints and then sell them at substantial
17 markup at events, including, the Hollywood Show an event in Los Angeles hosted
18 or otherwise operated by Defendant Hollywood Show, LLC. Medlin uploaded,
19 copied, displayed, and distributed his copyrighted Photographs on eBay and even
20 after being informed of the infringing activity through eBay, he continued to
21 infringe by displaying and selling the works at the Hollywood Show. The
22 Hollywood Show is liable under secondary infringement theories because, inter
23 alia it operates the venue/event where rampant infringement has long been known
24 to occur (including by its now former principal Samuel Kevin Martin, an
25 adjudicated willful copyright infringer), and it knew that Medlin in particular was a
26 copyright infringer and did nothing to stop infringing activities as well as derives a
27 substantial economic benefit from the infringing activities at the show.
28

1 Defendant Hollywood Show's Position:

2 Hollywood Show has been brought into this action as a defendant for
 3 secondary copyright infringement (vicarious and contributory) due to alleged sales
 4 of two of Plaintiff's copyrighted photographs by a vendor Defendant Michael
 5 Medlin. Hollywood Show has no evidence or knowledge that Michael Medlin was
 6 in possession of said copyrighted photographs, brought the photographs to the
 7 Hollywood Show, or sold such photographs at the Hollywood Show. Hollywood
 8 Show also lacked any notice or knowledge of potential infringers, including Mike
 9 Medlin to be selling infringing photographs or other materials at the show.
 10 Furthermore, Hollywood Show is seeking indemnity from Mike Medlin via a
 11 cross-complaint that has been filed concurrently with its answer.

12 Defendant Medlin's Position:

13 Medlin refused to participate in the conference, but has now admitted in
 14 court filings that he made the unauthorized photographic prints in question.
 15

16 **B. Subject Matter Jurisdiction**

17 This action arises under the provision of the Copyright Act of the United
 18 States, as amended, 17 U.S.C. § 101 et.seq., and is for infringement of copyrights
 19 registered in the Copyright Office of the United States. Therefore, this Court has
 20 jurisdiction over the subject matter of this action under 28 U.S.C. § 1331 and §
 21 1338(a).
 22

23 **C. Legal Issues**

24 This is a copyright infringement case. Plaintiff believes that the key legal
 25 issues are the ownership of the copyrights in question, the date of registration of the
 26 copyrighted images, damages, Defendant Hollywood Show's knowledge of the
 27 infringing activity, contributing actions to the infringing activity, and their ability to
 28 control said activity and derive a direct financial benefit therefrom.

1 **D. Discovery Plan**

2 1. Discovery Subjects:

3 The parties' preliminary assessment is that discovery may be required on,
4 but not limited to:

- 5 a) The allegations in the complaint and any responsive documents;
6 b) Evidence of the copyrights allegedly infringed;
7 c) Defendants' response to notice of infringement;
8 d) All affirmative defenses raised in the Answer
9 e) Factors relating to damages, including but not limited to statutory
10 damages;
11 f) Knowledge of the infringing activities at the show;
12 g) Ongoing business practices that involve/involved intentional,
13 purposeful, or with reckless disregard for or indifference to Plaintiff's
14 rights;
15 h) Revenue and profits from the show and/or use and display of the
16 infringing images;
17 i) Evidence that Mike Medlin was in possession of the copyrights
18 allegedly infringed and sold such copyrights at the Hollywood Show.
19 j) Right to control and supervise all vendors at the Hollywood Show.
20

21 2. Discovery cut-off

22 The parties propose that non-expert discovery be completed in May 27, 2016.
23 Should the parties intend to retain any testifying experts, all mandatory disclosures
24 for such experts shall be made as follows: initial reports in June 18, 2016 and any
25 rebuttal reports in July 18, 2016.

26 **E. Motions**

27 Plaintiff anticipates filing a motion for summary judgment against
28 Defendant Medlin. Hollywood Show anticipates to be filing a motion for summary

1 judgment against Plaintiff, Barry Rosen. The parties propose a June 9, 2016 filing
2 deadline for all dispositive motions.

3 **F. Settlement**

4 Plaintiff and Defendant Hollywood Show have engaged in extensive settlement
5 discussions, which have broken down. Defendant Medlin refuses to engage in
6 settlement discussions with Plaintiff although settlement demand was made by
7 Plaintiff. The Parties select ADR Procedure No. 2 – to mediate via the Courts ADR
8 program (neutral panel).

9 **G. Trial Estimate**

10 The parties estimate that time for trial will be 4 days. The parties have
11 requested a trial by jury. Parties propose the Final Pretrial Conference occur
12 on August 11, 2016 and the trial occur in August 25, 2016.

13 **H. Additional Parties**

14 Plaintiff may name the additional defendants Westin LAX hotel and/or
15 Samuel Kevin Martin, depending on what discovery reveals.

16 **I. Other Issues**

17 Defendant Medlin is currently in default. Medlin has refused to participate in
18 the Rule 26(f) conference and has filed a Motion to Set Aside Entry of Default
19 which is set for hearing on November 16, 2015 at 1:30 pm. Plaintiff has filed an
20 Opposition to the Motion. Medlin further refuses to speak with Plaintiff's counsel
21 regarding any issue in this matter.

22 **J. Proposals Regarding Severance, Bifurcation, or Other Ordering of 23 Proof**

24 N/A

25 **K. Amended Pleadings**

26 Plaintiff intends to file a second amended complaint once discovery reveals
27 further information.
28

L. Issues Which May Be Determined By Motion

Plaintiff believes that the direct liability claims against Defendant Medlin should proceed by way of default judgment for willful direct copyright infringement. If default is set aside, Plaintiff intends to file a motion for summary judgment as to Medlin. Plaintiff also intends to file a motion for summary judgment as to Defendant Hollywood Show. Plaintiff requests that he be allowed to file separate motions as the motion against Medlin can be filed at the very early stages now that he has admitted to willfully copying Plaintiff's images without license while Plaintiff anticipates filing such Motion against the Hollywood Show at a later date.

Defendant intends to file a motion for summary judgment against Plaintiff.

M. Summary of Proposed Dates

Event	Joint Proposed Dates
Last Day to File Amended Complaint	February 1, 2016
Discovery Cut-Off	May 27, 2016
Last Day to file dispositive motions	June 9, 2016
Initial Expert Report	June 18, 2016
Rebuttal Expert Report	July 1, 2016
Expert Discovery Cut-Off	July 15, 2016
Final Pre-Trial Conf.	August 11, 2016
Jury Trial	August 25, 2016

1 Respectfully submitted,
2

3 DATED: October 30, 2015

LAW OFFICES OF ADAM I. GAFNI

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5 By: /s/ Adam I. Gafni

6 Adam I. Gafni
7 Attorneys for Plaintiff
8 Barry Rosen
9

10 DATED: October 30, 2015

NORTON AND MELNIK

11
12 By: /s/ Geoffrey P. Norton

13 Geoffrey P. Norton
14 Attorneys for Defendant
15 Hollywood Show, LLC
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